

REMARKS

Claims 1-10, 14-19, and 30-37 were examined in the present Application. In view of the following remarks, the Applicants respectfully request reconsideration of the rejections and allowance of the Application.

Statement of Substance of the Interview

The undersigned representative engaged in a telephonic interview with Examiner Brian P. Whipple on June 25, 2009. The Applicant's representative extends his sincere thanks to the Examiner for his time during the aforementioned interview.

During the course of the June 25th interview, the discussion focused on the rejections under 35 U.S.C. §§ 112 and 103. The Examiner agreed to withdraw the Section 112 rejection in light of the explanation provided during the interview. The Applicants' representative agreed to include a summary of that explanation in the response to the *Office Action* (see discussion regarding § 112 rejection below). No agreement was reached, however, with respect to the Section 103 rejection. The Examiner did acknowledge that an argument presented in the response dated April 13, 2009 (*Response B*) was not addressed in the *Office Action*. Specifically, the Examiner failed to address the Applicants' prior argument that "[a] *prima facie* case of obviousness can be rebutted by showing that the art, in any material respect, teaches away from the claimed invention." See *Response B*, 11-12.

Rejections Under 35 U.S.C. § 112

The Examiner asserts that claims 1-10, 14-19, and 30-37 are rejected under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. *Office Action*, 3. Pursuant to the

June 25th interview, the Applicants submit the following summary provided during the interview and that overcomes said rejection.

The Examiner asserts that “[t]he term ‘parallel’ in claim 1 is a relative term which renders the claim indefinite.” *Office Action*, 3. The Applicants respectfully disagree. Independent claim 1 recites, in part, “retrieving the specified content **in parallel** from multiple content sources” (emphasis added). The phrase ‘in parallel’ is commonly understood to mean ‘occurring at the same time.’ See, e.g., ‘parallel,’ phrase def. ‘in parallel,’ New Oxford American Dictionary, 2nd ed., (2005). The Applicants note that the words of a claim must be given their plain meaning. See *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are **construed to mean exactly what they say**. Furthermore, “the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*). The Applicants believe that one skilled in the art would interpret ‘retrieving specified content **in parallel** from multiple content sources’ to mean ‘retrieving specified content from multiple content sources **at the same time**,’ based on the ordinary and customary meaning of the phrase ‘in parallel.’

The Examiner further asserts that “claim [1] is indefinite due to the conflicting language regarding the retrieval of the specified content.” *Office Action*, 4. More specifically, the Examiner states that “[i]t is unclear to the Examiner how the content can be retrieved from multiple content sources in parallel from ‘one’ client in the peer-to-peer network.” *Id.* The Applicants’ representative noted during the interview that the claimed invention should not be dissected into discrete elements whereby those elements then evaluated in isolation; the claim **as a whole** must be considered. See, e.g., *Diamond v. Diehr*, 450 U.S. 175, 188-89 (1981).

Claim 1 presently includes “**content sources including other clients and content servers** in the peer-to-peer network” (emphasis added). Claim 1 also sets forth “retrieving the specified content in parallel from multiple content sources,” which, as pointed out above, include both other clients and content servers. Claim 1 further includes the following two conditional elements:

- (a) “the specified content is retrieved from one or more of the other clients in the peer-to-peer network **when the specified content is available from one or more of the other clients in the peer-to-peer network as identified by the list of available content,**” and
- (b) “the specified content is retrieved from one or more of the content servers in the peer-to-peer network either **when the specified content is not identified on the list of available content or to satisfy a delivery guarantee of the specified content.**”

The two conditional elements above do not conflict with retrieving the specified content in parallel from **multiple content sources** because “one or more of the other clients” and “one or more of the content servers” are both defined in the claim as **content sources**. Therefore, if the condition described in (a) is satisfied, the multiple content sources from which the specified content is retrieved will include “one or more of the other clients.” Furthermore, if the condition described in (b) is satisfied, the multiple content sources from which the specified content is retrieved will include “one or more of the content servers.” For both of these conditional elements, the specified content will still be retrieved in parallel from multiple content sources, as required by the recitation in claim 1 of “retrieving the specified content in parallel from multiple content sources.”

In light of the explanation as provided during the Interview and summarized above, the Examiner agreed to withdraw the Section 112 rejection.

Rejections Under 35 U.S.C. § 103

The Examiner asserts that independent claims 1, 14, 36, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2002/0198930 (*Jones*) in view of U.S. Pub. No. 2002/0046232 (*Adams*), and further in view of U.S. Pub. No. 2004/0172476 (*Chapweske*). *Office Action*, 5. The Examiner also asserts that independent claim 34 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view *Adams*, further in view of *Chapweske*, and still further in view of U.S. Pub. No. 2005/0021398 (*McCleskey*). *Office Action*, 13. Further, the Examiner asserts that dependent claims 2-10, 15-19, 30-33, and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view *Adams*, further in view of *Chapweske*, and still further in view of other various references. *Office Action*, 5, 10, 12-14. The Applicants respectfully traverse because claims 1-10, 14-19, and 30-37 are patentable as *Jones* and *Adams* teach away from the claimed invention and the cited references fail to disclose ‘specified content being retrieved from the dedicated content server . . . to satisfy a delivery guarantee of the specified content.’

Jones and Adams Teach Away from the Claimed Invention.

As explained in detail in *Response B*, both *Jones* and *Adams* are directed to serial download schemes. See *Response B*, 11-12. Serial downloading schemes represent a fundamentally different approach than that set forth in independent claim 1, which requires “retrieving the specified content in parallel from multiple content sources.” A *prima facie* case of obviousness may be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997). Since *Jones* and *Adams* teach serial download schemes rather than a parallel download scheme, both *Jones* and *Adams* teach away from

the claimed invention. As such, a *prima facie* case of obviousness is lacking and the rejection of independent claim 1 under 35 U.S.C. § 103(a) is overcome.

The Applicants provided this line of reasoning in *Response B*. As the Examiner acknowledged in the June 25th interview, no arguments to counter this line of reasoning were provided in the *Office Action*. The Applicants respectfully point to MPEP § 707.07(f), which states that “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it” (emphasis added). The Applicants would respectfully request that any subsequent action be non-final in nature in order to allow a fair opportunity to counter the Examiner’s response (if necessary) as that opportunity would have otherwise been afforded through the present response.

The Cited References Fail to Disclose “specified content being retrieved from the dedicated content server ... to satisfy a delivery guarantee of the specified content.”

Independent claim 1 sets forth “specified content being retrieved from the dedicated content server . . . to satisfy a delivery guarantee of the specified content.” The Examiner has not provided any evidence that the cited references disclose retrieving content from a content server such that a delivery guarantee is satisfied. Additionally, the Applicants observe that the cited references do not even mention ‘delivery guarantees.’

To support a conclusion that the claim would have been obvious requires that **all the claimed elements were known in the prior art** and that one skilled in the art could have combined those elements. See *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007)(emphasis added); see also MPEP § 2143. Since the cited references fail to disclose all of the elements set forth in independent claim 1, namely a ‘delivery guarantee,’ the Applicants contend that claim 1 is patentable over the cited references.

Claims 2-10, 14-19, and 30-37 are Patentable for at least the Same Reasons as Independent Claim 1.

The Applicants have demonstrated that independent claim 1 is patentable over the cited references because (at the least) *Jones* and *Adams* teach away from the claimed invention and, further, because the cited references fail to disclose “specified content being retrieved from the dedicated content server . . . to satisfy a delivery guarantee of the specified content.” Since independent claims 14, 34, 36, and 37 include elements similar to those of independent claim 1, claims 14, 34, 36, and 37 are patentable for at least the same reasons. Furthermore, as a dependent claim incorporates by reference all the limitations of the claim from which it depends (see 35 U.S.C. § 112 ¶ 4), dependent claims 2-10, 15-19, 30-33, and 35 are also patentable for at least the same reasons as the independent claim from which they depend.

CONCLUSION

The rejection under 35 U.S.C. § 112 ¶ 2 of claims 1-10, 14-19, and 30-37 is overcome, at least, because claims 1-10, 14-19, and 30-37 particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. More specifically, the ordinary and customary meaning of the phrase 'in parallel' is commonly understood by those of ordinary skill in the art, and the present claims do not contain conflicting language regarding the retrieval of specified content.

The rejection under 35 U.S.C. § 103(a) of claims 1-10, 14-19, and 30-37 is overcome, at least, because a *prima facie* case of obviousness is lacking because *Jones* and *Adams* teach away from the claimed invention. Additionally, the cited references fail to a delivery guarantee.

Based on the foregoing remarks, the Applicants believe the rejections to the claims have been overcome and that the present Application is in condition for allowance. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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